

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. S-2351-A
Case No. A-5787
Case No. A-5794
Case No. A-5832
Case No. A-5886
Case No. A-5917**

PETITION OF MID-ATLANTIC PETROLEUM PROPERTIES, LLC

OPINION OF THE BOARD

(Opinion adopted October 5, 2011)

(Effective Date of Opinion: October 21, 2011)

Case No. S-2351-A is an application by Mid-Atlantic Petroleum Properties, LLC (MAPP) for a modification of the existing automobile filling station special exception to allow: 18 parking spaces; approval of the existing height of the canopy over the gas pumps; revised lighting and photometric plans [Exhibit Nos. 93 and 99]; an ATM machine with a lit canopy; revisions to the landscape plan; a brick patio, fountain and exit door; enlargement of the trash enclosure; revised light fixtures on the front of the car wash and the convenience store.

Case No. A-5787, the Appeal of Steven Grayson, is Brooke Venture (BV) LLC's administrative appeal of Building Permit # 265089 for MAPP's office building;

Case No. A-5794, the Appeal of Carlos Horcasitos, is MAPP's administrative appeal of DPS's June 5, 2002 issuance of a Stop Work Order under Building Permit # 265089;

Case No. A-5832, the Appeal of Brooke Venture, LLC, is BV's Appeal of DPS's Decision to lift the Stop Work Order for MAPP's office building;

Case No. A-5886, the Appeal of Brooke Venture, LLC, is BV's Appeal of DPS's Decision not to issue a Stop Work Order and not to revoke Building Permit # 265089; and

Case No. A-5917, the Appeal of Brooke Venture, LLC, is BV's Appeal of the Use and Occupancy Certificate issued by DPS for MAPP's office building.

The Hearing Examiners for Montgomery County held hearings on the consolidated cases on October 2, 2003, October 5, 2009, October 29, 2010, November 15, 2010, November 18, 2010 and March 4, 2011. On June 8, 2011, the Hearing Examiners issued a Report and Recommendation for approval of Case No. S-2351-A, dismissal of Case Nos. A-5794, A-5832 and A-5886, grant of Case No. A-5917, and denial in part and grant in part of Case No. A-5787.

The Board of Appeals initially considered the Hearing Examiner's Report and Recommendation at its Worksession on July 13, 2011. The Board also had before it timely requests for Oral Argument from the parties. On October 5, 2011, the Board of Appeals held Oral Argument on the Report and Recommendation.

The Board of Appeals again considered the Hearing Examiner's Report and Recommendation, together with the arguments presented at Oral Argument on October 5, 2011. After careful consideration and review of the record, the Board adopts the findings and recommendations of the Hearing Examiners' Report and Recommendation for the reasons stated therein, except as modified below. Accordingly, the Board of Appeals:

1. Grants the major modification in Case No. S-2351-A, subject to the following conditions:
 - a. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in the Hearing Examiners' Report, and in this opinion.
 - b. All terms and conditions of the previously approved special exception remain in full force and effect, except as modified by approval of this modification.
 - c. The gasoline station may remain open 24 hours per day, 7 days a week, and the convenience store will operate with the same hours, but only be open for public access to the interior between 6:00 a.m. and midnight. The carwash hours shall be 8:00 a.m. to 8:00 p.m. daily, 7 days a week.
 - d. The gate for the dumpster enclosure must be repaired and painted with green to blend with the evergreen trees around it.

- e. The height of the canopy over the pump islands must not exceed 17' 10" on the west end and 21 feet and 8 inches on the east end as shown on the site plan.
- f. No exterior or interior seating shall be provided for use by the patrons of the convenience store.
- g. MAPP shall include in its employee manual an instruction that all employees must park in the three parking spaces adjacent to the stormwater management facility.
- h. The Petitioner must comply with the terms of its revised special exception site plan (Exhibit 130(e)), revised landscape plan (Exhibits 130(f), (g) and (h)) and lighting plan (Exhibit 93(a) through (d); Exhibit 99.
- i. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

2. Dismisses Case Nos. A-5794, A-5832, and A-5886 as moot.

3. Denies that portion of the appeal in Case No. A-5787 that relates to setbacks for the office building.

4. Grants that portion of the appeal in Case No. A-5787 that pertains to the adequacy of parking because the number of parking spaces provided for the MAPP building does not meet the requirements of Section 59-E-3.2 of the Montgomery County Zoning Ordinance.

5. Grants the appeal in Case No. A-5917, and directs DPS to revoke the Certificate of Occupancy appealed in that case. The Board further directs the Department of Permitting Services to inspect the MAPP building to determine compliance with the applicable parking requirements of the Zoning Ordinance as interpreted in the Hearing Examiner's Report and Recommendation, as well as the applicable requirements of the Americans with Disabilities Act.

- A. If the inspection by DPS supports a determination that adequate parking exists according to the requirements of the Zoning Ordinance as interpreted in the Hearing Examiner's Report and

Recommendation, the Board directs DPS to issue a Certificate of Occupancy with the following restriction set forth on the Certificate:

Occupancy of the building shall be limited to 4,666 square feet of office use and 1,080 square feet of retail. No additional area may be occupied until such time as parking is provided to support increased occupancy of the building in accordance with the Board of Appeals Decision and Order in BA Case No. A-5917.

- B. If such inspection reveals insufficient parking for the space currently occupied, the Board directs DPS to issue a Certificate of Occupancy restricting occupancy to the amount of square footage for which parking is provided, unless MAPP demonstrates to the satisfaction of DPS that it is able to provide the required number of parking spaces, in which case following DPS verification that such additional parking has been provided, DPS is directed to issue a Certificate of Occupancy conditioned as provided in A, above.

6. Orders that all parking and access for the office building shall comply with the requirements of the Americans with Disabilities Act, the 2004 ADAAG Guidelines, and, at a minimum, the requirements of the Department of Justice Standards for Accessible Design (the 2010 DOJ Standards or preceding regulations) which are applicable if and when the Certificate of Occupancy is issued.

On a motion by David K. Perdue, Vice-Chair, seconded by Carolyn J. Shawaker, with Stanley B. Boyd, Walter S. Booth and Catherine G. Titus, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 21st day of October, 2011.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.